

## Message Text

LIMITED OFFICIAL USE

PAGE 01 USUN N 01791 01 OF 02 071949Z

ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 EPG-02 COME-00 DODE-00

DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-07 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

USIA-06 FEA-01 AF-10 ARA-10 EA-07 EUR-12 NEA-10

/162 W

-----072011Z 102386 /72

R 071858Z JUN 77

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 3907

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 1791

FROM LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJ: INFORMAL PLENARY ON PART IV (COMPULSORY SETTLEMENT)

1. CONFERENCE PRESIDENT AMERASINGHE, IN CHAIRING THE FIRST INFORMAL PLENARY HELD ON CDS, COMMENCED THE DISCUSSION WITH AN EXAMINATION OF ARTICLE 9 (CHOICE OF PROCEDURE), TO BE FOLLOWED BY A DISCUSSION OF ARTICLE 15 OF ANNEX II (SEABED DISPUTES CHAMBER), ARTICLE 12 (PROVISIONAL MEASURES) AND ARTICLE 14 (PROMPT RELEASE OF VESSELS). IN STATING THE PREFERENCES OF MANY DELEGATIONS AS TO ARTICLE 9, PARTICULARLY AS TO THE ISSUE OF THE RESIDUAL FORUM ABSENT AGREEMENT BY THE PARTIES (ART.9(3)), PRESIDENT AMERASINGHE ASKED FOR THE EXPRESSED CONSIDERATION BY THE DELEGATIONS PRESENT OF THE FOLLOWING FOUR POINTS ON THE RELATIONSHIP OF PART I TO PART IV, INSOFAR AS THE SEABED CHAMBER (SBC) OF THE FULL LAW OF THE SEA TRIBUNAL ("LOST") AS PROVIDED FOR IN ARTICLE 15 OF ANNEX II

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USUN N 01791 01 OF 02 071949Z

TO PART IV WAS CONCERNED:

(1) WHETHER ALL PART I DISPUTES SHOULD BE DECIDED BY A SEPARATE SEABED TRIBUNAL, AS PROVIDED FOR IN PART I, OR BY THE SEABED CHAMBER (SBC) AS PROVIDED FOR IN ARTICLE 15;

(2) WHETHER THE SEABED TRIBUNAL OR THE SBC SHOULD HAVE EXCLUSIVE JURISDICTION, OR WHETHER THE OTHER OPTIONS IN 9

SHOULD ALSO BE AVAILABLE FOR SEABED DISPUTES;  
(3) HOW CAN THE SBC BE INCLUDED IN ART. 9(1), AS AN  
INDEPENDENT FORUM FOR PART I DISPUTES, WITHOUT THEREBY BINDING  
ANY PARTY TO ACCEPTING THE LOST UNDER 9(1) (A); AND  
(4) WHETHER THE LOST OR ARBITRATION SHOULD BE THE RESIDUAL  
FORUM AS PROVIDED IN ARTICLE 9(5).  
AMERASINGHE THEN INVITED OTHER DELEGATIONS TO EXPRESS  
THEIR VIEWS.

2. THE REPRESENTATIVE OF TUNISIA, LEADING OFF THE DIS-  
CUSSION AND, AS BECAME LATER EVIDENT, ACTING AS SPOKESMAN  
FOR THE GROUP OF 77, STATED THAT THERE SHOULD BE A  
SPECIAL DEEP SEABEDS CHAMBER OF THE LOST WHICH WOULD  
BE THE SOLE OBLIGATORY FORUM HAVING EXCLUSIVE JURISDICTION  
OVER ALL MATTERS RELATING TO COMMITTEE I MATTERS. HE WAS  
OPPOSED TO THE CREATION OF TWO SEPARATE TRIBUNALS. AS  
TO ARTICLE 9(2), WHICH DEALS WITH THE DUTY TO SELECT OTHER  
PROCEDURES FOR DISPUTES NOT SUBJECT TO SPECIAL ARBITRAL  
PROCEDURES (SAP), HE PROPOSED THAT THE LAST CLAUSE  
"FOR THE SETTLEMENT OF DISPUTES TO WHICH THE ACCEPTED SPECIAL  
ARBITRAL PROCEDURE IS NOT APPLICABLE" SHOULD BE DELETED,  
THUS REQUIRING THAT A PARTY CHOOSING SAP SHOULD ALSO SELECT  
ANOTHER PROCEDURE FOR ALL DISPUTES, WHETHER OR NOT COVERED  
BY SAP. HE EXPRESSED NO PREFERENCE AS TO THE  
RESIDUAL FORUM (ART. 9(3). TUNISIA'S SUPPORT FOR  
A SINGLE LAW OF THE SEA TRIBUNAL WITH A SEABED CHAMBER  
WHICH WOULD BE OBLIGATORY FOR ALL DISPUTES RELATING TO  
C-I, TUNISIA WAS SUBSEQUENTLY ECHOED BY BANGLADESH,  
ARGENTINA, YUGOSLAVIA, PERU, VENEZUELA AND BRAZIL.  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 01791 01 OF 02 071949Z

3. THE GREEK REPRESENTATIVE STATED HIS PREFERENCE  
FOR THE PRIOR VERSION OF ARTICLE 9(3), WHICH PROVIDED  
THAT THE DEFENDANT'S CHOICE OF FORUM WOULD PREVAIL  
ABSENT CONTRARY AGREEMENT BY THE PARTIES. HE, THERE-  
FORE, BELIEVED ART 9(3), IN PROVIDING ARBITRATION AS THE  
LOWEST COMMON DENOMINATOR, CREATED A LACK OF BALANCE IN THE  
TEXT, WHICH UNDULY FAVORED ARBITRATION AS A PROCEDURAL  
FORUM. AMERASINGHE COUNTERED THAT IN ARBITRATION BOTH PARTIES  
COULD CHOOSE THEIR PANELS ON A PARITY BASIS, AND THERE-  
FORE PROVIDED THE REQUISITE BALANCE DESIRED.

4. THE USSR REPRESENTATIVE (ROMANOV) IN A LONG INTERVENTION,  
STATED THAT, NOTWITHSTANDING DISAGREEMENT ON SEVERAL  
POINTS, THE USSR BELIEVED THE RSNT ARTICLES ON CDS PROVIDED  
A FAIR BASIS FOR NEGOTIATIONS. ALTHOUGH FREEDOM OF CHOICE  
AS TO FORUM WAS RESTRICTED, THE DEGREE OF RESTRICTION  
WAS UNDER THE CIRCUMSTANCES A REASONABLE ONE.  
ROMANOV MADE IT ABUNDANTLY CLEAR THAT DELETION OF OR

SERIOUS AMENDMENT TO SAP PROVIDED IN ANNEX IV WOULD AUTOMATICALLY RESULT IN THE IMPOSSIBILITY OF THE USSR ENDORSING THE CDS TEXT. HE FURTHER WISHED TO KNOW THE EXACT NATURE OF THE SBC AS PROVIDED IN ARTICLE 15 OF ANNEX II, THE PLACE IT WOULD HAVE VIS-A-VIS THE FULL LAW OF THE SEA TRIBUNAL, AND WHAT FORM IT WOULD TAKE. ROMANOV ALSO EXPRESSED THE NEED TO PROVIDE IN 9(1) FOR A MEANS BY WHICH A STATE COULD AGREE TO ACCEPT THE SBC FOR ALL DISPUTES RELATING TO THE DEEP SEABEDS WITHOUT THEREBY ACCEPTING THE JURISDICTION OF THE LAW OF THE SEA TRIBUNAL. HE CLOSED BY STATING HIS SUPPORT FOR ARBITRATION AS THE RESIDUAL FORUM AS PROVIDED IN ARTICLE 9(3), WHICH REPRESENTED A GOOD COMPROMISE

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 USUN N 01791 02 OF 02 072003Z  
ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01  
CEQ-01 CG-00 CIAE-00 EPG-02 COME-00 DODE-00  
DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-01  
INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01  
OES-07 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15  
USIA-06 FEA-01 AF-10 ARA-10 EA-07 EUR-12 NEA-10  
/162 W

-----072011Z 102565 /72

R 071858Z JUN 77  
FM USMISSION USUN NEW YORK  
TO SECSTATE WASHDC 3908

LIMITED OFFICIAL USE SECTION 2 OF 2 USUN 1791

FROM LOS DEL

BETWEEN THE ANTITHETICAL VIEWPOINTS.

6. IN RESPONSE TO THE EARLIER INTERVENTIONS, THE CHAIRMAN PROPOSED THE FOLLOWING CHANGES:  
(A) IN RESPONSE TO THE NEED TO PROVIDE FOR ACCEPTANCE OF THE COMPULSORY JURISDICTION OF THE DEEP SEA-BEDS CHAMBER WITHOUT NEED TO ACCEPT THEREBY THE LAW OF THE SEA TRIBUNAL, ADD TO ARTICLE 9(1) (A) WORDS SUCH AS "OR THE SEA-BED CHAMBER FOR DISPUTES RELATING TO THE

SEABED" AFTER "THE LAW OF THE SEA TRIBUNAL."  
(B) IN RESPONSE TO TUNISIA'S CONCERN ABOUT THE  
LAST CLAUSE OF ARTICLE 9(2), ADD THE WORDS  
"OR ANY FIELD NOT FALLING WITHIN THE FORE-  
GOING CATEGORIES" AFTER THE WORD "NAVIGATION"  
IN ARTICLE 1 OF ANNEX IV TO PART IV.

7. THE UNITED STATES (SOHN), IN ADDRESSING REMARKS BY  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USUN N 01791 02 OF 02 072003Z

THE PRESIDENT AND BY OTHER DELEGATIONS, POINTED OUT THE  
HISTORICAL U.S. ROLE IN ESTABLISHING A SEPARATE SEABED  
TRIBUNAL. HE STATED OUR PRESENT WILLINGNESS TO RECON-  
SIDER THE U.S. POSITION ON THIS POINT IN A SPIRIT OF  
ACCOMMODATION, GIVEN THE NEW FORMULATION IN ANNEX II  
AND THE EXPRESSED WISH OF MANY DELEGATIONS FOR A SINGLE  
LAW OF THE SEA TRIBUNAL. THIS WOULD BE CONTINGENT,  
HOWEVER, ON A RESOLUTION OF THE RELATIONSHIP OF THE  
SEABED CHAMBER TO PART I. THE U.S. MIGHT BE WILLING TO  
ACCEPT THE EXCLUSIVE JURISDICTION OF THE SBC AS TO ALL  
C-I ISSUES IF PROPER SAFEGUARDS CAN BE AGREED UPON AS  
TO THE ELECTION OF MEMBERS OF THE SBC. IN RESPONSE TO  
THE POINT RAISED BY THE SOVIET UNION AS TO ARTICLE 9(1) (D)  
THE U.S. REPRESENTATIVE PROPOSED THE FOLLOWING AMENDMENT  
TO ARTICLE 9, SECTION II OF PART IV OF THE RSNT, WHICH  
MIGHT BE SUBSTITUTED FOR PARAGRAPH 2 OF THE PRESENT TEXT,  
IF THE OLD PARAGRAPH 2 IS DELETED:

"ANY STATE WHICH HAS NOT ACCEPTED THE LAW OF THE SEA  
TRIBUNAL IN ACCORDANCE WITH SUB-PARAGRAPH (1) (A) OF THIS  
ARTICLE SHALL NEVERTHELESS BE BOUND BY PROVISIONS OF  
PART I, AND OF ARTICLE 15 OF ANNEX II TO PART IV OF THE  
PRESENT CONVENTION, RELATING TO THE JURISDICTION OF THE  
SEA-BED DISPUTES CHAMBER OF THE LAW OF THE SEA TRIBUNAL."  
SUCH A PROVISION WOULD MEAN THAT THE JURISDICTION OF  
THE SBC WOULD BE EXCLUSIVE AS TO ALL C-I MATTERS AND A  
STATE COULD ACCEPT IT WITHOUT PREJUDICE TO ITS NON-  
ACCEPTANCE OF THE FULL LAW OF THE SEA TRIBUNAL.

8. THE UNITED STATES FURTHER STATED THAT THE PROBLEM  
INHERENT IN ARTICLE 9(2) COULD BE CURED BY EITHER  
INCLUDING A FIFTH CATEGORY UNDER ARTICLE 1 OF ANNEX IV,  
PROVIDING FOR SPECIAL SELECTION OF ARBITRATORS FOR  
DISPUTES NOT INCLUDED IN THE FOUR CATEGORIES ENUMERATED,  
OR BY THE CHANGE PROPOSED BY PRESIDENT AMERASINGHE WITH  
RESPECT TO THE FOURTH CATEGORY. THE US REPRESENTATIVE  
FURTHER CLARIFIED THE RELATIONSHIP OF ARTICLE 9(2) TO  
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 01791 02 OF 02 072003Z

9(5), STATING THAT UNDER THESE PROVISIONS, NO STATE WOULD BE OBLIGED TO BE BOUND TO RESORT TO THE SPECIAL ARBITRAL PROCEDURES AGAINST ITS WILL. HE CONCLUDED BY STRESSING THE NEED FOR FLEXIBILITY OF PROCEDURE AND THE CONSEQUENT NECESSITY OF NOT DESTROYING THE FLEXIBILITY INHERENT IN ART. 9.

9. FRANCE INTERVENED, STATING HER DISLIKE FOR ANY PRE-CONSTITUTED TRIBUNAL AND HER PREFERENCE FOR ARBITRATION, WHICH ALLOWED PARTIES TO CHOOSE IMPARTIAL JUDGES ON A PARITY BASIS. SHE INDICATED SHE WAS FAVORABLY INCLINED TOWARDS SAP AND TOWARD THE RSNT WHICH REPRESENTED CONSIDERABLE PROGRESS OVER THE INITIAL TEXT.

10. BRAZIL STATED THAT ARTICLE 9(1)(D) SHOULD BE INTERPRETED AS APPLYING TO ALL CATEGORIES OF DISPUTES, AND IF THIS IS THE SITUATION 9(2) MAY NOT BE NECESSARY.

11. THE CHAIRMAN ADJOURNED THE MEETING AND STATED IT WOULD NEXT CONVENE ON TUESDAY, 7 JUNE.

LEONARD

LIMITED OFFICIAL USE

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** DISPUTE SETTLEMENT, SEABED, MEETING DELEGATIONS, INTERNATIONAL TRIBUNALS, INTERNATIONAL ARBITRATION  
**Control Number:** n/a  
**Copy:** SINGLE  
**Sent Date:** 07-Jun-1977 12:00:00 am  
**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1977USUNN01791  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D770203-0037  
**Format:** TEL  
**From:** USUN NEW YORK  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1977/newtext/t19770681/aaaacszd.tel  
**Line Count:** 248  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Message ID:** cd193a83-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION DLOS  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 29-Mar-2005 12:00:00 am  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 2241267  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** INFORMAL PLENARY ON PART IV (COMPULSORY SETTLEMENT)  
**TAGS:** PLOS, UN  
**To:** STATE  
**Type:** TE  
**vdkgvwkey:** odb://SAS/SAS.dbo.SAS\_Docs/cd193a83-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009